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SUBJECT: BACKGROUND ON SAMEL SAMI KHOUZAM EXTRADITION

REF: a) 2006 Cairo 1227 b) 2006 State 42818

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¶1. (SBU) Recent press reports have focused on the possible extradition of Egyptian citizen Sameh Sami Khouzam from the United States to Egypt; some of these reports have been inaccurate. The purpose of this cable is to describe the history of the case itself. Khouzam is an Egyptian citizen who fled to the United States seeking asylum in 1998 after being accused of the murder of Ms. Hekmat Zaki Mohamed Yousef on February 10, 1998. He was subsequently convicted in absentia. He is fighting this deportation.

¶2. (U) On February 27, 1998, the GOE requested the extradition of Khouzam who was in INS custody in New York fighting deportation proceedings.

In the deportation hearing he gave a sworn statement on March 5, 1998. After reviewing all the evidence in the case, including Khouzam's sworn statement, an INS judge denied his petition for removal, holding that substantial evidence existed implicating him in a "serious nonpolitical crime" and ordered his repatriation to Egypt. The immigration judge also rejected Khouzam's claim that he was framed. In January 1999 the Board of Immigration Appeals (BIA) denied his appeal. A third appeal was dismissed by the BIA in March 2002.

¶3. (U) In 2000, when the proceedings described in paragraph 2 were taking place, the US adopted Article Three of the United Nations Convention Against Torture (CAT). Article Three prohibits the deportation of any individual to a state where there are substantial grounds to believe he would be subject to torture. After the United States adopted the CAT, Khouzam filed a second petition claiming that his deportation was improper under CAT. An immigration judge granted this second petition, holding that it was more likely than not that Khouzam would be tortured. The INS appealed this decision to the Board of Immigration Appeals but their appeal was denied in July 2000. The INS then moved the Board to reconsider its decision. On May 7, 2002, the Board reconsidered and vacated its July earlier decision and ordered that Khouzam be removed from the United States. The defense subsequently appealed the denial of both petitions to the Second Circuit of the Federal Court of Appeals (Second Circuit)

¶4. (U) The Second Circuit in *Khuzam v. Ashcroft*, 361 F.3d 161 (2nd Cir. 2004), upheld the immigration judge's holding in the first petition concluding that the immigration judge properly found that there were serious reasons to believe that Khouzam murdered Zaki Youssef (see para six for the full statement and a description of the Egyptian police evidence). The Court also rejected the claim that he was framed. However, the Second Circuit did grant Khouzam's request with respect to the second petition. It vacated BIA's May 2002 decision vacating its July 2000 decision which granted Khouzam relief under Article Three of the CAT.

¶5. (SBU) Subsequently, the Department of State decided, pursuant to 8CFR 208.18 and 208.17, to seek adequate assurances from the GOE that Khouzam would not be tortured. With that, and with DHS's agreement, they could override BIA's decision. The State Department did receive what it considered to be adequate assurances and DHS concurred. Consequently BIA's decision to defer removal was rendered invalid and Khouzam was arrested. This is where the case now stands.

¶6. (U) Begin statement of Second Circuit Court:

The immigration judge relied on documents describing an Egyptian police investigation into the death of one Zaki Mohammed Youssef. These documents, that included Egyptian police reports and a warrant for Khouzam's arrest, indicate Khouzam's fingerprints were found at the crime and he was seen with an injured hand and a bloody shirt on the night of the murder. Further, they relate that the police later recovered the bloody shirt, and the blood on it matched the victim's blood type. They also suggest a possible motive for the killing. In addition to this documentary evidence, the immigration judge noted that Khouzam had arrived in the United States one day after the alleged murder with an injured hand. When asked about his injury he told the INS that a woman had attacked him with a vase, they had fought, she had fallen, and he had run. The judge observed that Khouzam's injured hand and his story are consistent with his having committed the murder.

Khouzam maintains that none of the documents received from Egypt are reliable because he was framed by the Egyptian police. He offered the testimony of two expert witnesses, one of whom pointed to irregularities in the police reports. The other expert described persecution of the Coptic Christians in Egypt and opined that a number of Copts have been wrongfully accused of crimes. Khouzam also offered a letter from a friend in Egypt stating that the alleged victim had not been killed, and enclosing photographs to prove that she was alive. The photographs however, were of an unrecognizable veiled woman.

Petitioner also declares that the U.S. government passed information from his confidential asylum application to the Egyptian government.

This assertion does not detract from the evidence that Khouzam allegedly committed a murder, which, if credited, would bar him from asylum and withholding. While we requested further briefing from the parties on this matter because of its potential effect on his CAT claim, our decision on that claim renders it irrelevant.

While petitioner's evidence might cast a reasonable doubt on his guilt, it does not compel a finding that he was framed. Absent such a finding, we agree with the immigration judge that there were serious reasons to believe that Khouzam committed the murder. We therefore deny Khouzam's petition for review of the BIA's asylum and withholding decision.

End statement.